

3/29/2023 MSP Recovery Claims, Series LLC, et al. v. Mallinckrodt Ard Inc., et al. Steve Miller

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

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CITY OF ROCKFORD, :

Plaintiff, :

vs. : Case No.

MALLINCKRODT ARD INC., : 3:17-cv-50107

Defendant. :

- - - - -X

SERIES 17-03-615, a designated :

series of MSP RECOVERY CLAIMS, :

SERIES LLC, et al., :

Plaintiffs, :

vs. : Case No.

EXPRESS SCRIPTS INC., et al., : 3:20-cv-50056

Defendants. :

- - - - -X

VIDEO DEPOSITION OF STEVE MILLER
Clayton, Missouri
March 29, 2023
9:13 AM

Reporter: Jude Arndt, CSR, CCR, RPR

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

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1 DEPOSITION OF STEVE MILLER, produced,
2 sworn, and examined on March 29, 2023, at Spencer Fane,
3 1 North Brentwood Boulevard, Suite 1200, in the City of
4 Clayton, State of Missouri, before Jude Arndt, a
5 Certified Shorthand Reporter and Certified Court
6 Reporter.

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4 Class:

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19

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22

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1 THE VIDEOGRAPHER: This is File Number 1
2 of the videotaped deposition of Steven Miller in the
3 matter of the city of Rockford versus Mallinckrodt ARD
4 Inc., et al, in the United States District Court,
5 Northern District of Illinois, Western Illinois, Case
6 Number 3:17-cv-50107.

7 This deposition is being held at Spencer Fane, 1
8 North Brentwood Boulevard, Suite 1200, Clayton,
9 Missouri on March 29, 2023.

10 The time on the video screen is 9:13 AM. My
11 name is Luke Arndt. I am the legal videographer from
12 Digital Evidence Group. The court reporter is Jude
13 Arndt in association with Digital Evidence Group.

14 Will counsel please introduce themselves for the
15 record?

16 MR. PLATT: Good morning. This is William
17 Platt II. I'm with the law firm of Haviland Hughes,
18 and I'm here on behalf of the City of Rockford and the
19 a class.

20 MR. RASMUSSEN: Khristian Rasmussen,
21 counsel for plaintiffs, the MSP plaintiffs.

22 MR. FORST: Good morning. This is Keith

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1 Forst with Quinn Emanuel Urquhart & Sullivan on behalf
2 of the Express Scripts entities and the witness.

3 MR. HAMANN: This is Matthew Hamann from
4 Quinn Emanuel on behalf of the Express Scripts entities
5 and the witness.

6 MS. BAUMANN: Urmila Paranjpe Baumann,
7 chief counsel of litigation, Express Scripts.

8 THE VIDEOGRAPHER: Will the court reporter
9 please swear in the witness?

10

11 The witness, STEVEN MILLER, first having been
12 duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. PLATT:

15 Q. Good morning, Dr. Miller. We met before
16 the deposition. Thank you for taking the time to come
17 out today for this next round.

18 Sir, do you know why you are here for a second
19 deposition?

20 A. My understanding is you have more
21 questions for me.

22 Q. And also we have some more documents that

1 we didn't have when we had your deposition the first
2 time.

3 Mr. Haviland deposed you the first time. He is
4 my law partner. We are on the same side and we
5 represent the same clients.

6 Do you understand that?

7 A. Yes, sir.

8 Q. Okay. Dr. Miller, you have stated both
9 publicly and I think on the record in this case that
10 you were unhappy with the prices of Acthar; is that
11 correct?

12 A. Correct.

13 Q. And could you give me -- let me just go
14 back.

15 How many -- what years did you work for Express
16 Scripts?

17 A. I joined the company in 2005, and stayed
18 with the company until its acquisition by Cigna.

19 Q. By Cigna?

20 A. Yes.

21 Q. When was that?

22 A. The Cigna acquisition was 2019.

1 Q. All right. And is it safe to say, sir,
2 that you were unhappy with the prices of Acthar during
3 that entire period of employment with Express Scripts?

4 A. Yes.

5 Q. And you stated previously that you made it
6 clear that you were unhappy, and you stated so
7 publicly; correct?

8 A. That's correct.

9 Q. Could you give me some examples of when
10 you stated your unhappiness with the prices of Acthar
11 publicly?

12 A. So we have a client forum. I have, you
13 know, used Acthar as an example of a drug that's taken
14 egregious price hikes in those forums.

15 But I can't give you any specific examples, but
16 I know that both, you know, in the press and in
17 investor conferences and others, I was very clear that
18 I was unhappy with the price.

19 Q. When you say the press, what are you
20 referring to?

21 A. Oh, just, you know, general publications,
22 Fierce Pharma, things like that, that cover our

1 industry.

2 Q. So -- what was that last one? You said
3 Fierce Pharma?

4 A. Fierce Pharma is just a trade journal
5 that, you know, covers the biopharmaceutical industry.

6 Q. All right. Do you recall when you made
7 any statements to Fierce Pharma regarding your
8 unhappiness with --

9 A. I'm not sure if it was specific to Acthar,
10 but the high price of drugs has been something I've
11 campaigned against for a long time, and Acthar was a,
12 you know, example of what we thought were
13 inappropriately-priced drugs.

14 Q. And do you recall -- and I have a document
15 here I can distribute.

16 Do you recall in 2015 Brian Henry prepared a
17 statement for you to post on the Express Scripts blog
18 regarding high prices of drugs?

19 A. Brian Henry prepared statements -- yeah, I
20 mean, he prepared statements many times on my behalf.

21 Q. I'm going to mark as Exhibit 1 an e-mail
22 from Brian Henry to you dated September 22nd, 2015.

1 Before we look at that and while we are
2 distributing this document, do you recall a Citibank
3 conference that you attended where you made a statement
4 to investors about your unhappiness with the price of
5 Acthar?

6 A. Yes.

7 Q. And do you recall when that conference
8 took place?

9 A. Can't tell you the specific date.

10 Q. Would you agree with me it was in 2017?

11 A. I -- you know, if you say so, I believe
12 it's 2017.

13 Q. All right. Now, at that Citibank
14 conference, who was in attendance at that particular
15 conference?

16 A. Oh, I can't tell you who was --

17 Q. Not by name. Just generally. It was
18 investors; correct?

19 A. These were investors.

20 Q. Okay. So it wasn't a conference that
21 included the general public; correct?

22 A. It did not include the general public.

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1 Q. So you had to be a investor to attend that
2 meeting; right?

3 A. I assume that's the rules. I did not -- I
4 had nothing to do with the invitations.

5 Q. All right. So that's one example of what
6 you would describe as a public criticism --

7 A. Yeah.

8 Q. -- of the increase in drug prices?

9 MR. FORST: Wait for him to finish the
10 question.

11 BY MR. PLATT:

12 Q. And I'm sorry about that. I don't mind
13 having that that back-and-forth that way, but for the
14 court reporter it's miserable, and witnesses have a
15 tendency to understand where I'm going with a question,
16 so you're going to be quick to give me answer,
17 especially if you agree with where I'm going with a
18 question.

19 So it's difficult for you and me and it's going
20 to be difficult for you, but let's just try to let me
21 finish, and then you can answer the question.

22 So that was -- you said that was one of the

1 examples of where you publicly --

2 A. I viewed any public statement was any
3 statement that could be -- you know, may make its way
4 into general circulation.

5 Q. Okay.

6 A. And so that was not a confidential
7 discussion with the investors, and so it could very
8 likely become a public statement; correct.

9 Q. And at that Citibank conference you
10 explicitly criticized the prices of Acthar; right?

11 A. I believe so.

12 Q. I gave you Exhibit 1. I think you have
13 it.

14 A. I do not.

15 [Exhibit 1 marked for identification.]

16 BY MR. PLATT:

17 Q. And sir, I'll represent to you that I had
18 the opportunity to depose Brian Henry last week. He
19 came in for a second deposition like you are, and I
20 asked him about this particular document.

21 You know who Brian Henry is; right?

22 A. Yes.

1 Q. And what was his job at Express Scripts?

2 A. He was in communications.

3 Q. What else that --

4 A. Vice president of communications for
5 Express Scripts. So he would interact with our
6 publication relations effort.

7 Q. Okay. So he would be sort of the -- well,
8 let me strike that.

9 Exhibit 1 is an e-mail from Brian Henry to you
10 and it carbon copies David Whitrap.

11 Do you see that?

12 A. Correct.

13 Q. Who is David Whitrap?

14 A. He worked for Brian Henry. He was his
15 lieutenant.

16 Q. And when you say lieutenant, what does
17 that mean?

18 A. He was his subordinate. He was -- they
19 worked together as a team. Brian was his direct -- his
20 boss.

21 Q. Okay. And you'll see that obviously Brian
22 Henry in that first paragraph describes what he is

1 sending to you; right?

2 A. Yes.

3 Q. And he says he wants to put this -- he
4 says want to put this out under your name. Can do so
5 as soon as we here from you. Thanks in advance.

6 Do you see that?

7 A. Yes.

8 Q. And then below that there is sort of it
9 looks like what I'm just going to generally call a
10 press release; is that fair?

11 A. I don't think -- I thought -- I don't know
12 what -- if he was releasing this to the press. I don't
13 know the -- or if he said he was putting thing on a
14 blog.

15 Q. All right. So Brian Henry told me he was
16 putting it on a blog, and he said there was a Express
17 Scripts blog that was operated by Express Scripts. Are
18 you familiar with that blog?

19 A. Yes.

20 Q. What's that called?

21 A. I believe it's the Express Scripts Blog.

22 Q. Okay. It's not Fierce Pharma?

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1 A. No, no.

2 Q. Okay. And do you know who has access to
3 that blog?

4 A. I believe the blog is open to the public.

5 Q. And it goes on the website, the Express
6 Scripts website?

7 A. I believe it goes on the Express Scripts
8 website.

9 Q. All right. So Brian Henry told me that he
10 drafted this particular blog post, and his e-mail seems
11 to indicate that he did it for you; correct?

12 A. Correct.

13 MR. FORST: Objection. Objection.
14 Foundation.

15 BY MR. PLATT:

16 Q. Do you recall seeing this e-mail before?

17 A. I don't recall this specific -- I don't
18 recall this e-mail specifically, no.

19 Q. And when typically -- was it typical for
20 Brian Henry to draft blog posts for you, or under your
21 name as he says?

22 A. Yes.

1 Q. And then they were posted on the blog?

2 A. Yes.

3 Q. On the Express Scripts website; correct?

4 A. Correct.

5 Q. All right. Do you remember whether or not
6 this particular draft blog post was posted on the
7 Express Scripts internet blog?

8 A. I don't know because I have never accessed
9 the blog.

10 Q. Okay. Was it your practice to review
11 Brian Henry's drafts of blog posts before they were
12 submitted for public consumption?

13 A. Yes.

14 Q. And you do or you don't recall reviewing
15 this particular blog post?

16 A. There were multiple blog posts. I don't
17 recall this one specifically.

18 Q. Do you remember telling Brian Henry that
19 you don't want this blog post posted as drafted?

20 MR. FORST: Objection. Foundation.

21 A. Like I said, I don't remember particular
22 blog post. I don't remember.

1 BY MR. PLATT:

2 Q. All right. Well, let's read it. Maybe it
3 will refresh your recollection a little bit.

4 There is a statement that Mr. Henry writes under
5 your name, it says -- in the second paragraph -- well,
6 let's read the whole thing.

7 It was revealed earlier this week that Daraprim,
8 a 62-year-old drug that treats toxoplasmosis, recently
9 had an overnight price increase of 5,000 percent.

10 Do you see that?

11 A. Yes.

12 Q. So he is clearly talking about the
13 Daraprim controversy, which he bold and underlined, and
14 he is referencing a \$5,000 (sic) increase in the price
15 of Daraprim; right?

16 MR. FORST: Objection to the form.

17 A. It appears that way, yes.

18 BY MR. PLATT:

19 Q. And he says that that Daraprim was a
20 62-year-old drug in 2015; right?

21 A. Yes.

22 Q. Do you know whether or not that's

1 accurate?

2 A. I do not know if that's the exact age of
3 the drug.

4 Q. Okay. Do you know if Daraprim in 2015
5 increased the price of the drug -- if the price of
6 Daraprim was increased 5,000 percent?

7 A. These numbers are correct.

8 Q. Okay.

9 So in the next paragraph, he says unfortunately
10 this isn't a new phenomenon.

11 Do you see that?

12 A. Yes.

13 Q. And the blog post says Daraprim is one of
14 several older generic medications.

15 Do you see that?

16 A. Yes.

17 Q. Is that accurate?

18 A. Yes.

19 Q. Okay. Was Acthar gel one of those -- one
20 of those several drugs that he is referencing there?

21 MR. FORST: Objection to the form. Calls
22 for speculation.

1 A. So Acthar gel was not a generic
2 medication.

3 BY MR. PLATT:

4 Q. Right.

5 A. And so -- but -- and so he obviously --
6 there is obviously examples given subsequently. But so
7 Acthar gel may not be specifically what he has in mind
8 here.

9 Q. Okay.

10 A. Or what --

11 Q. Now, he wrote this for your signature;
12 right?

13 A. Uh-huh.

14 Q. I'm going to say signature generally. I
15 don't know how you sign off on a blog post, but he
16 wrote this for you to post under your name; right?

17 A. Yes.

18 Q. He also talks about -- the blog post also
19 talks about a drug called Vimovo.

20 What is Vimovo, do you remember?

21 A. Vimovo is a combination of two generic
22 drugs that was put together as a combo tablet.

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1 Q. And then there's another drug called
2 Duexis?

3 A. Yes.

4 Q. What is Duexis, do you know?

5 A. Same. Two generic drugs put together as a
6 new drug.

7 Q. Okay. So in 2015 -- you testified already
8 you were unhappy with the prices of Acthar throughout
9 your entire employment with Express Scripts; right?

10 A. Yeah, you know, let me modify that. I'm
11 not sure I was even aware of the price of Acthar when I
12 first joined the company, but when I became aware of
13 the price I was unhappy with it.

14 Q. Were you aware of the price of Acthar in
15 2015?

16 A. Yes.

17 Q. When you reviewed this and gave Mr. Henry
18 permission to post this on the blog, why didn't you ask
19 him to include Acthar as one of the examples?

20 MR. FORST: Objection. Lack of
21 foundation.

22 A. So this statement is accurate, gives

1 examples, and so we did not include every example of
2 drugs that had increase in drug price.

3 And he was specifically making a point about
4 generic drugs having their prices increased.

5 BY MR. PLATT:

6 Q. But in 2015 you did believe that Acthar
7 was overpriced; right?

8 MR. FORST: Asked and answered.

9 A. Yes.

10 BY MR. PLATT:

11 Q. And you're telling me that you never went
12 back to Mr. Henry and said I want you to include Acthar
13 in this blog post?

14 A. Correct.

15 MR. FORST: Objection.

16 BY MR. PLATT:

17 Q. All right. I'm going to ask you some
18 questions just kind of generally to familiarize myself
19 and the jury with these documents that we received.

20 [Exhibit 2 marked for identification.]

21 BY MR. PLATT:

22 Q. Dr. Miller, you'll see this is an e-mail

1 from Brian Henry dated August 31st, 2016, and it's
2 addressed to you; correct?

3 A. Yes --

4 MR. FORST: I'm going to object that the
5 first exhibit is outside the scope of the order. They
6 were older produced documents, not new ones.

7 MR. PLATT: I don't think this is an older
8 produced document. I would disagree with that.

9 MR. FORST: We can tell from the Bates
10 number, but we lodge our objection.

11 MR. PLATT: Okay.

12 BY MR. PLATT:

13 Q. Sir, you see at the top of that e-mail,
14 Brian Henry says to you, you were right, parentheses,
15 again, end parentheses.

16 Do you see that?

17 A. Yes.

18 Q. Do you recall receiving this particular
19 e-mail from Mr. Henry in August of 2016?

20 A. No.

21 Q. If you review the e-mail and you read the
22 article he's referring to -- could you explain to me,

1 if you know, what he meant when he said you were right
2 again?

3 MR. FORST: Objection to the form.
4 Foundation.

5 A. I do not.

6 BY MR. PLATT:

7 Q. Okay. And, sir, that's -- I just gave you
8 two documents that were examples of discussions about
9 high drug prices.

10 Do you understand that?

11 MR. FORST: Objection to the form.

12 A. Yes.

13 BY MR. PLATT:

14 Q. We have received million dollars of pages
15 of documents in this case, and we have had several
16 attorneys and staff review these documents, and I can't
17 find anything else that mentions your name and attaches
18 your name to any discussion about price increases or
19 any complaints about the increase in the price of
20 Acthar.

21 Can you give me any other specific examples of
22 where you made any kind of public statement?

1 MR. FORST: Objection to the testimony.

2 Mischaracterizes the record. Lack of foundation.

3 A. Yeah, so I have campaigned tirelessly
4 for -- against the high prices of drugs. I cannot give
5 you specific examples of when I have talked about
6 Acthar or any other specific product.

7 BY MR. PLATT:

8 Q. Okay. So you are stating generally that
9 you are talking about high drug prices, and you
10 protested high drug prices; right?

11 MR. FORST: Objection.

12 BY MR. PLATT:

13 Q. I want to focus specifically on Acthar,
14 not Daraprim or the generics that we talked about
15 earlier. I'm just asking the question as it pertains
16 to Acthar only.

17 Can you give me any specific examples sitting
18 here today where you publicly criticized Mallinckrodt
19 for the price increases of Acthar?

20 MR. FORST: Asked and answered.

21 A. I cannot -- I cannot give you specific
22 examples.

1 BY MR. PLATT:

2 Q. Dr. Miller, do you know what prior
3 authorization is?

4 A. Yes, sir.

5 Q. Could you explain to the jury what a prior
6 authorization is?

7 A. So it's a utilization management technique
8 in which a drug has to be approved before the patient
9 will know that their planned sponsor will subsidize the
10 cost of that product.

11 Q. And when you say approved, who has -- who
12 makes -- who does the approval?

13 A. So the approval could be done -- depends
14 on who the planned sponsor chooses to do the prior
15 authorizations. Sometimes they utilize our services,
16 sometimes they utilize outside services.

17 Q. And sir, I'm going to give you an e-mail
18 just to give you a point of reference, Exhibit 3.

19 [Exhibit 3 marked for identification.]

20 BY MR. PLATT:

21 Q. Sir, you're not on this e-mail, I'll state
22 for the record, but do you see in the first e-mail it's

1 an e-mail from Everett Neville?

2 Do you know who Everett Neville is?

3 A. Yes.

4 Q. And who is he?

5 A. He was one of our executives who was over
6 supply chain.

7 Q. And this was the same Everett Neville that
8 was at the Citibank conference with you in 2017; right?

9 A. Correct.

10 Q. And Gary Kline is addressed in the to
11 line.

12 Who is Gary Kline?

13 A. Gary Kline works for government affairs
14 for Express Scripts.

15 Q. Okay. And who is --

16 MR. FORST: And objection. I'm going to
17 lodge another objection to the whole document.

18 BY MR. PLATT:

19 Q. And who is Megan Hauck?

20 A. I don't know.

21 Q. Do you see where Mr. Neville writes, I
22 understand it. Our cost containment here is the PA.

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1 Do you know what he means when he says that?

2 A. Whatever example he is citing, the -- the
3 tool we are using to contain costs is a prior
4 authorization.

5 Q. And do you see the article that's
6 referenced and looks like it's cut and pasted in the
7 e-mail from May 7, 2018 at 6:25 PM from Megan Hauck to
8 Gary Kline?

9 A. Yes.

10 Q. Did you ever see that particular news
11 article before today?

12 A. Not that I remember.

13 Q. Dr. Miller, do you recall if Express
14 Scripts had prior authorization -- and tell me if I'm
15 saying this the wrong way.

16 Did Express Scripts have a prior authorization
17 policy in place in 2005 for Acthar when you started at
18 the company?

19 MR. FORST: Just objection. Outside the
20 scope of the order.

21 A. We did not.

22 BY MR. PLATT:

1 Q. How about in 2006?

2 A. We did not.

3 Q. What about 2007?

4 A. We did not.

5 Q. What about 2008?

6 A. We did not.

7 Q. What about 2009?

8 A. We did not.

9 Q. What about 2010?

10 A. No.

11 Q. 2011?

12 A. No.

13 Q. 2012.

14 A. I believe that's when we had a prior
15 authorization policy.

16 Q. You did for Acthar?

17 A. I believe that's the date.

18 Q. And what's your basis for that?

19 A. Discussions from this case.

20 Q. So you have no independent knowledge

21 outside of this case whether or not there was a prior

22 authorization in place in 2012 for Acthar?

1 MR. FORST: Objection. Objection to the
2 form. Foundation.

3 A. I do not know the date that the prior
4 authorization was in place, correct.

5 BY MR. PLATT:

6 Q. Okay. Do you know if they had a prior
7 authorization in place in 2013 for Acthar?

8 MR. FORST: Objection to the form.

9 A. You -- I do not have the data when the
10 prior authorization policy went into place.

11 BY MR. PLATT:

12 Q. Well, I'm just going to keep going.
13 Do you know if it was place in 2017?

14 A. I believe there was a prior authorization
15 in place in 2017.

16 Q. And what's your basis for that conclusion?

17 A. In the prior deposition, we actually went
18 over the Acthar gel prior auth, and the date was I
19 believe somewhere around -- somewhere between 2012 and
20 2015.

21 Q. So somewhere between -- why do you -- why
22 do you believe it was between 2012 abstract and 2015?

1 A. Because my memory of it is sketchy.

2 Q. But you are certain --

3 A. That's correct.

4 Q. -- it was sometime between 2012 and 2015?

5 A. Yes, sir.

6 Q. Did something occur at Express Scripts
7 that triggered the implementation of a prior
8 authorization policy for Acthar?

9 A. Yes.

10 Q. What was that?

11 A. So early on, we followed -- we followed
12 what are called drug trends, what our clients are
13 spending on drugs.

14 Early in my career, Acthar gel never hit
15 anyone's radar screen for a couple of reasons. One is
16 Acthar gel was a very small-volume product, mostly used
17 for kids, and most of those kids were covered by
18 Medicaid, and we had very little Medicaid business.

19 Over time, you know, obviously the price went up
20 with Acthar gel, but also the number of patients that
21 were -- that it was being utilized on went up. And so
22 when it became an issue for our clients, then our team

1 that does prior authorizations put a prior
2 authorization in place.

3 Q. Was price the only issue that you were
4 concerned about with regard to Acthar?

5 A. More important than price is appropriate
6 utilization.

7 Q. What do you mean when you say appropriate
8 utilization?

9 A. So you know, we are very committed to
10 getting the best health care for our patients. And
11 when we see that drugs are not being -- that the best
12 drugs aren't being utilized for our patients, often
13 we'll put in place utilization management policies to
14 both improve the care that patients receive but also
15 control their costs, because, you know, choosing poorly
16 represents unnecessary spending.

17 Q. Okay. So what indications, if you recall,
18 did Acthar treat?

19 A. So Acthar gel -- and this is actually
20 something that I read when I reviewed my testimony that
21 I said incorrectly -- Acthar gel's label is it has two
22 indications, and that is for infantile spasm and

1 exacerbations of multiple sclerosis.

2 It has approval for a whole list of other
3 things, but it's truly indicated for two specific
4 diseases.

5 And in our review, Acthar gel was the drug of
6 choice for infantile spasms, and for most all other
7 diseases there was better products in the marketplace.

8 Q. And when you say all other diseases, do
9 you include multiple sclerosis in that category?

10 A. I think it's indicated for exacerbations
11 of multiple sclerosis so it's not first-line therapy
12 for multiple sclerosis, and so this is when making sure
13 that people are using it appropriately -- is why it's
14 also covered in the prior authorization.

15 Q. Dr. Miller, what I did see in a lot of
16 your documents that were recently produced is the name
17 Martin Shkreli.

18 Do you know who Martin Shkreli is?

19 A. Yes, I do.

20 Q. And who is Martin Shkreli?

21 A. Martin Shkreli was with Turing
22 Pharmaceuticals, and he was the one who bought the

1 rights to Daraprim and increased the price.

2 Q. Okay. Have you ever met Mr. Shkreli?

3 A. Yes.

4 Q. In person?

5 A. Yes.

6 Q. When?

7 A. At a Forbes conference.

8 Q. You said a Forbes conference. Do you
9 remember when that was?

10 A. It was in New York. It was widely covered
11 in the press. Forbes actually had me address Mr.
12 Shkreli.

13 Q. I'm sorry. The last part you said there
14 was what?

15 A. Forbes actually had me address Mr.
16 Shkreli.

17 Q. Had you address Mr. Shkreli?

18 A. So Mr. Shkreli was giving a presentation
19 at the Forbes conference. They specifically asked me
20 to ask a question of Mr. Shkreli. You can go on
21 YouTube and find the video if you would like.

22 Q. What was the question you asked -- that

1 Forbes asked you to ask Mr. Shkreli?

2 A. They didn't ask me to ask a specific
3 question. They gave me the opportunity to ask a
4 question.

5 And I believe -- and, you know, my memory is I
6 believe I asked him a question about his motivation
7 behind the price increase for Daraprim.

8 Q. All right. And what was his answer?

9 A. He said that it was his fiduciary
10 responsibility to raise the price, that he worked for
11 the shareholders, and that maximizing return was what
12 he was responsible to do for his shareholders.

13 Q. Did Mr. Shkreli at that Forbes conference
14 ever make a statement that Express Scripts was trying
15 to get Daraprim's business from him?

16 MR. FORST: Objection as to the form.

17 A. Yeah, he said something along those lines,
18 that Express Scripts was trying to get his business.

19 BY MR. PLATT:

20 Q. Was that in response to your question?

21 A. I believe it came out in response to my
22 question; correct.

1 Q. And were you aware, sir, that Express
2 Scripts was in fact trying to get Daraprim on its list
3 of drugs?

4 MR. FORST: Objection. Foundation.

5 A. Yeah, I'm unclear -- I don't remember if I
6 was aware, because that was a separate side of the
7 business.

8 BY MR. PLATT:

9 Q. Did you have any reaction, positive or
10 negative, to his statement that Express Scripts was
11 trying to get Daraprim business from Mr. Shkreli?

12 A. It would not surprise me if the company
13 was trying to have access to the drug. It's what we do
14 for our patients, is we get access for drugs, and this
15 was an important drug for patients who had a specific
16 type of infection associated with either pregnancy or
17 HIV.

18 Q. So when Mr. Shkreli said at the Forbes
19 conference that Express Scripts was trying to get
20 Daraprim business from him, he was correct; right?

21 MR. FORST: Objection. Form. Also scope.

22 A. He was correct.

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1 MR. PLATT: Okay. I'm just going to take
2 a couple minutes here. Off the record, just because I
3 might be done soon.

4 THE VIDEOGRAPHER: Off the record at 9:43
5 AM.

6 [A recess was taken.]

7 THE VIDEOGRAPHER: Back on the record at
8 9:50 AM.

9 BY MR. PLATT:

10 Q. Dr. Miller, you were testifying earlier
11 about the price of Daraprim and how you were unhappy
12 the increase, 5,000 percent increase in the price of
13 Daraprim; correct?

14 A. Correct.

15 Q. Do you know if there was any change to the
16 price of Daraprim while you were employed at Express
17 Scripts?

18 Let me just clarify. After the 5,000 percent
19 increase.

20 A. So we came up with a compounded solution
21 for Daraprim that was less expensive.

22 Q. And what does that mean when you say

1 compound solution?

2 A. So a compounding pharmacy is a pharmacy
3 that can -- has the ability to produce on a doctor's
4 order a prescription. And so there are compounded
5 products where the pharmaceutical manufacturer can get
6 the ingredients and utilize it to make a appropriate
7 substitute product.

8 Q. Okay. So when you say compounding, you
9 mean a substitute product?

10 A. It's not the same as the manufactured
11 product --

12 Q. Oh, okay.

13 A. -- but it is substitutable for clinical
14 products.

15 Q. Okay. And did Express Scripts have any
16 role in that what I'm going to call the compounding
17 process of Daraprim?

18 MR. FORST: Object -- sorry. Object to
19 the form.

20 A. So Express Scripts has its own compounding
21 pharmacy for certain products, but in this particular
22 case we were not involved in compounding.

1 BY MR. PLATT:

2 Q. All right. Did you have any conversations
3 with the Food and Drug Administration regarding the
4 compounding of Daraprim?

5 A. I had no direct conversations with the
6 Food and Drug Administration.

7 Q. Sir, we deposed Mr. Everett Neville
8 recently, and Mr. Everett Neville said that you did.

9 MR. FORST: Objection to the form.

10 BY MR. PLATT:

11 Q. Would you disagree with Mr. Neville?

12 MR. FORST: Objection. Let me just
13 interpose the objection. Mischaracterizes the
14 testimony. You can answer.

15 A. Yeah, so our company interacts with the
16 FDA, but I had no specific conversations with the FDA
17 on Daraprim.

18 BY MR. PLATT:

19 Q. Do you know if anybody from Express
20 Scripts had a conversation with the FDA on that
21 subject?

22 A. I know that our government affairs people

1 who are -- who usually are the ones who interact with
2 the FDA made it clear to me that the FDA had expressed
3 their displeasure with our Daraprim solution.

4 Q. Okay. And when you say they expressed
5 displeasure with your Daraprim solution, you mean
6 Express Scripts' Daraprim solution?

7 A. So we utilized -- we were contacted by a
8 compounding pharmacy that said that they could create a
9 substitution product that was not the same as the
10 Daraprim product that was in the marketplace, which was
11 important to us because we did not want to violate any
12 FDA regulation.

13 And so when a physician prescribes Daraprim,
14 they also drew leucovorin, and so the compounding
15 pharmacy was able to create a substitute product that
16 had both the Daraprim and the leucovorin.

17 Q. Oh, okay. Now, how did you -- you didn't
18 have any conversations with the FDA, but you have
19 knowledge of communications with the FDA.

20 How do you have that knowledge?

21 A. Yeah. So I have obviously at times met
22 with the FDA, met with the -- the commissioner of the

1 FDA.

2 But when it came to Daraprim specifically, it
3 was our government affairs people that were receiving
4 communications from the FDA and passing it onto me.

5 Q. Okay. Was there ever any kind of I'm
6 going to say conceptual -- if you don't understand
7 that, let me know -- conceptual compound alternative to
8 Acthar while you were at Express Scripts?

9 MR. FORST: Objection to the form.

10 A. So the same compounding pharmacy that had
11 talked to us about Daraprim said that they had a
12 solution for Acthar.

13 We did not believe it was -- it would meet the
14 FDA requirements, and so we had never -- we were never
15 able to utilize that solution.

16 BY MR. PLATT:

17 Q. Did you personally ever have
18 communications with the FDA regarding that Acthar
19 alternative?

20 A. No.

21 Q. Do you know if anyone from Express Scripts
22 ever had a conversation with the FDA about that

1 particular Acthar alternative?

2 MR. FORST: Objection to the form.

3 A. I do not know.

4 Q. Are you able to cite me any document or
5 e-mail between Express Scripts and the FDA regarding
6 this Acthar alternative?

7 MR. FORST: Objection to the form.

8 A. I can't help you there.

9 BY MR. PLATT:

10 Q. So the answer is no?

11 A. No.

12 Q. Can you give me a name of anybody from the
13 FDA that you spoke to about compounding alternatives?

14 A. No.

15 Q. Dr. Miller, when you -- I'm just going to
16 go back to the beginning of the deposition where you
17 talked about your objections to the high prices of
18 Acthar.

19 MR. FORST: Objection. Scope.

20 BY MR. PLATT:

21 Q. Do you remember that testimony today? Do
22 you recall the testimony?

1 A. Yes.

2 Q. You are aware, sir, that clients like
3 mine, the City of Rockford, were paying high prices for
4 Acthar while you were employed at Express Scripts;
5 right?

6 A. Correct.

7 Q. I have nothing further. Thank you for
8 your time.

9 EXAMINATION

10 BY MR. RASMUSSEN:

11 Q. Good morning, Dr. Miller.

12 A. Good morning.

13 Q. I have to imagine you are sick and tired
14 of talking about Acthar after all of these years, so
15 I'll try to keep it short for you.

16 Earlier this morning you mentioned that I think
17 more important than price is appropriate utilization.
18 Those are your words.

19 A. (Nodding "yes.")

20 Q. Can you explain what you meant by that?

21 A. Yeah, so you know, the care of patients is
22 crucial to us. And even if a drug is expensive, if you

1 don't have to take the drug at all, it's even less
2 expensive than getting a discount on drugs.

3 So making sure that drugs are being used
4 appropriately is a really important function for our
5 organization.

6 Q. Do you mean -- so when you say if you
7 don't have to take the drug at all, would that be
8 because some medications are used off-label to treat
9 things that they may not really be efficacious for?

10 A. I'll give you the best example.

11 Q. Please do.

12 A. Is inappropriate use of antibiotics. So a
13 lot of times doctors will prescribe antibiotics when
14 people have, for instance, a viral infection --
15 antibiotics have no impacts on virus -- and so that
16 would be inappropriate use.

17 So we put into place programs to work with
18 doctors to make sure antibiotics are being used
19 appropriately.

20 Q. Are you aware of any situations involving
21 the appropriate use of Acthar to treat conditions that
22 it's really not efficacious for?

1 A. So Acthar, as we talked about earlier, has
2 on its label that it is approved for a variety of
3 indications, almost. Almost every one of those
4 indications -- studies have been done that show other
5 products being more effective, and so wanting our
6 patients to get the most effective products we would
7 steer people to those other products. So that's what
8 the prior authorization does.

9 Q. Okay. And you also said something earlier
10 today. You said choosing poorly represents unnecessary
11 spending.

12 Does that mean -- or explain what you meant by
13 that.

14 A. So the antibiotic example would be
15 pertinent there.

16 So if a doctor makes a poor decision and decides
17 to put patient on antibiotic when they don't have an
18 infection, not only can it -- does it have no benefit
19 to the patient, it can actually have a deleterious
20 effect because every drug has side effects.

21 Q. And you would agree that for 17 or 19 of
22 the potential indications for Acthar, it's a poor

1 choice for patients?

2 A. The -- for the vast majority -- I can't
3 give you the specific number, but for the vast majority
4 of indications, or for the vast majority of the
5 approvals that it's available for, it's a poor choice.

6 Q. And you previously testified in this
7 litigation that Acthar has some 17 or 19 potential
8 indications. For almost all of those, it's a poor
9 choice?

10 A. Again, I correct myself. Those are
11 approvals, not -- its indications for two -- for two
12 specific diseases. For those things it's a poor
13 choice.

14 Q. Okay. And choosing poorly would be --
15 represents unnecessary spending?

16 A. Choosing poorly can represent unnecessary
17 spending.

18 Q. And in the context of Acthar, that would
19 be if it's -- well, strike that.

20 You said patient -- you said the care of
21 patients is crucial.

22 A. Correct.

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1 Q. Would you agree that patient safety should
2 be the top priority of Express Scripts?

3 MR. FORST: Objection to the form.

4 A. So our primary role in health care is to
5 make drugs safer and more affordable, and so both of
6 those are important tenets to our company.

7 BY MR. RASMUSSEN:

8 Q. And specifically with respect to Acthar,
9 what was Express Scripts' role?

10 MR. FORST: Objection to the form.

11 A. So Express Scripts, as a pharmacy benefits
12 manager, we work with clients to create drug lists that
13 represent the most cost-effective products for their
14 employee base to utilize.

15 BY MR. RASMUSSEN:

16 Q. Okay. And is it reasonable for a pharmacy
17 benefits manager, PBM, to knowingly profit by selling
18 drugs like Acthar that were egregiously priced?

19 A. So we have several arms to our company.
20 We have pharmacy benefits manager, we have a specialty
21 pharmacy, we have distribution, and each of them have
22 their own business model.

1 And, you know, and each of them have their own
2 client base.

3 Q. That's a perfectly acceptable answer to a
4 different question. So I just want you to answer my
5 question, if possible.

6 MR. RASMUSSEN: Can you read my -- can you
7 read the question back?

8 [The pending question was read by the
9 reporter.]

10 MR. FORST: Objection.

11 A. So --

12 MR. FORST: Form. Asked and answered.

13 A. Yeah. So PBMs don't sell drugs.

14 BY MR. RASMUSSEN:

15 Q. Okay. So what did the PBM, being Express
16 Scripts in this case, what did -- what was its role
17 with respect to Acthar?

18 A. So the PBM's role was to make the -- was
19 to choose the formulary and to make sure that the
20 utilization management programs that went with that
21 formulary were adhered to.

22 Q. And that's it?

1 A. That's the role of the PBM.

2 Q. Okay. And then under the -- under Express
3 Scripts, you also had some subsidiaries that were
4 responsible for exclusively distributing the
5 medication; right?

6 A. Under Express Scripts we have multiple
7 subsidiaries, including specialty pharmacies and
8 distribution.

9 Q. Okay. And so do you believe that it's --
10 strike that.

11 Would you agree that a drug distributor should
12 not needlessly profit by selling drugs that are
13 egregiously priced?

14 A. I believe the distributor should not --
15 you know, I think that companies are in business to
16 make profits, and remember the pharmaceutical
17 manufacturer sets the price of the drug, not the
18 distributor.

19 And so I do believe that even though a drug can
20 be egregiously priced, it's probably still important to
21 have it available in the marketplace.

22 So in that particular case if the distributor is

1 profiting from a egregiously-priced drug, it's probably
2 appropriate for their business.

3 Q. Okay. And do you think that it's
4 reasonable for Express Scripts to knowingly profit from
5 a drug that it believes is egregiously priced?

6 MR. FORST: Objection to the form.
7 Foundation.

8 A. So there is a lot of drugs that are
9 overpriced in the marketplace. They still need to be
10 made available for patients. Patient care is really
11 important.

12 And so I think that in those particular cases,
13 while you may not like the price of the drug, you still
14 have to make the product available, so yes.

15 BY MR. RASMUSSEN:

16 Q. And so is it your opinion that it is --
17 it's responsible for Express Scripts to knowingly
18 participate in selling a drug for indications where
19 there are other better options to treat their disease?

20 MR. FORST: Objection. Form, foundation.
21 Assumes facts not in evidence.

22 A. So the -- these are separate businesses.

1 So when a distributor is selling a drug, they don't
2 know what the use of the drug is for. That's not
3 provided to the distributor.

4 So that's beyond their knowledge of what it
5 would be used for.

6 BY MR. RASMUSSEN:

7 Q. So you are telling me that in the case of
8 Acthar, the distributor had no idea what indications it
9 was being approved -- or being distributed for?

10 A. Well, the distributor knows what the drug
11 is available in society for. They know what -- you
12 know, what doctors are prescribing it for.

13 But their role, the distributor's role, is not
14 to manage the use of the product.

15 Q. You would agree that placing patients in
16 danger is never appropriate?

17 MR. FORST: Objection to the form.

18 A. Yeah, I think that most people believe
19 that placing patients in danger is not appropriate.

20 BY MR. RASMUSSEN:

21 Q. Right. You would also agree that you want
22 to keep patients safe?

1 A. I have already stated that -- yeah.

2 Q. Yes?

3 A. Keeping patients safe is one of our goals.

4 Q. Okay. And you would also agree that when
5 patients don't receive medications that they need, that
6 exposes them to risk?

7 A. Yes.

8 Q. Okay. And when patients don't receive
9 medications that they need -- strike that.

10 Are you aware of any delays that prevented, in
11 the shipping or distribution or handling of Acthar,
12 that caused patients to not receive the medication on
13 time

14 MR. FORST: Object -- sorry. Objection.
15 Form. Foundation. Again, scope.

16 A. I'm not aware of -- of the supply chain
17 issues with Acthar.

18 BY MR. RASMUSSEN:

19 Q. So you are telling me that in all of these
20 years of talking about Acthar, ad nauseam -- agreed --
21 you have never become aware of any delays in getting
22 the product in to the patients?

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1 MR. FORST: Objection to the colloquy
2 testimony. Form. Foundation.

3 A. So back early on, when Acthar was still I
4 believe either owned by Questcor or even owners before
5 Questcor, there was a shortage of Acthar in the
6 marketplace that resulted in rationing of Acthar, but
7 that was, you know, many, many, many years ago.

8 BY MR. RASMUSSEN:

9 Q. Do you agree that Express Scripts should
10 never prevent or delay medically-necessary treatment
11 due to making a business agreement designed to put
12 profits over patient safety?

13 MR. FORST: Objection to the form.
14 Foundation.

15 A. Can you repeat the question?

16 MR. RASMUSSEN: Sure. Can you read it
17 back, please?

18 [The pending question was read by the
19 reporter.]

20 A. Yes, I would hope that the company
21 prevents harm occurring to patients over a business
22 agreement.

1 BY MR. PLATT:

2 Q. Do you also agree that Express Scripts
3 should never exaggerate or misrepresent the efficacy of
4 a medication like Acthar?

5 A. I do not believe the company should
6 exaggerate the benefits of a medication.

7 Q. And is it your opinion that -- or strike
8 that.

9 Are you aware of anyone at Express Scripts or
10 any of its subsidiaries ever exaggerating the efficacy
11 of Acthar?

12 A. Personally, no. You know, I have talked
13 about its -- its relative non-benefit for most of the
14 approved indication -- or approved reasons that it's
15 available, and we were very specific that -- especially
16 for infantile spasm, for instance, to this day it
17 continues to be the drug of choice.

18 Q. So is that a yes or a no?

19 MR. FORST: Objection. Asked and
20 answered.

21 A. That's a yes.

22 BY MR. RASMUSSEN:

1 Q. Do you agree that a company should never
2 profit by selling or distributing a medication that has
3 been subjected to egregious price increases?

4 A. No.

5 Q. And what are the circumstances under which
6 you believe that it's appropriate for a company,
7 particularly a company -- well, strike that.

8 Your -- the role of Express Scripts is to
9 reduce -- drive costs down; right?

10 A. The role of the pharmacy benefit manager
11 is to control spend and prove -- and hopefully make
12 better health care.

13 Q. And by pharmacy benefits manager, you mean
14 Express Scripts?

15 A. I mean, the PBM component of Express
16 Scripts, Incorporated.

17 Q. Okay. And if that's the job of a PBM, to
18 drive -- to help reduce costs of medications, and
19 increase access -- agreed?

20 A. To make appropriate access.

21 Q. Right, appropriate access.

22 Then explain to me how you believe it is

1 appropriate to profit from drugs that have been
2 subjected to egregious price increases.

3 A. Yeah. So there are many drugs that are
4 vital for the care of patients that have been
5 egregiously priced. I'll give you a great example.
6 The EpiPen used to cost \$94 for a two-pack. It went up
7 to \$300, and then went up to \$600.

8 That's an egregiously-priced drug, but it's
9 vital to save lives when someone has an anaphylactic
10 reaction. And so we make it available to patients to
11 save their life.

12 And so I believe that there are times when
13 egregiously-priced drugs are dispensed from our
14 specialty pharmacy and that that's appropriate.

15 Q. And you would agree then that if the
16 medication is not medically necessary, like most of the
17 indications are for Acthar, that you should not -- that
18 PBM should not profit by selling the medication that
19 has been subjected to egregious price increases?

20 A. Again --

21 MR. FORST: Objection to the form. Go
22 ahead.

1 A. Again, the PBM doesn't dispense the drug.

2 And so the role of the PBM is to make sure the drug is
3 being used appropriately, and that's why the PBM puts
4 in place utilization management programs.

5 BY MR. RASMUSSEN:

6 Q. Yeah, but in this particular instance
7 isn't the distributor of Acthar a subsidiary of Express
8 Scripts; correct?

9 MR. FORST: Objection. Hypothetical.
10 Foundation.

11 A. And so these different subsidiaries
12 function within their own business models and sets of
13 rules. And there are, you know -- and so they are
14 independent businesses.

15 And so how the PBM runs, and my ability to
16 actively campaign against high drug prices, is
17 independent of what the distributor is doing or the
18 specialty pharmacy may be doing.

19 BY MR. RASMUSSEN:

20 Q. You agree that for most patients that were
21 prescribed Acthar, it was -- that the drug was not
22 worth what they were paying for it?

1 MR. FORST: Objection to the form. Lack
2 of foundation.

3 A. So I don't know what time frame you are
4 talking about. I don't know the market share for
5 utilization was. You have got to be more specific.

6 So if for instance the majority of patients are
7 getting it for infantile spasm, that's appropriate use.

8 BY MR. RASMUSSEN:

9 Q. Sure. Sure. Sure. Well, maybe you could
10 help explain to me, because I'm just referring to --
11 I'm going to refer you to testimony your testimony.

12 [Exhibit 4 marked for identification.]

13 BY MR. RASMUSSEN:

14 Q. And if you go ahead and turn with me now
15 to Page 45.

16 A. Yes.

17 Q. Now, Dr. Miller, this is your testimony
18 under oath that you previously provided; correct?

19 A. Yes.

20 Q. All right. So do you see about
21 three-fourths of the way down the page, Line 18, where
22 it says the deponent -- that's going to be you;

1 correct?

2 A. Okay.

3 Q. And you say so Acthar for many indications
4 is not worth what they're charging for it.

5 A. Correct.

6 Q. Okay. And so in this particular -- so you
7 would agree that companies like AvMed that have paid
8 for the medication, that their beneficiaries receive,
9 it wasn't worth it?

10 MR. FORST: Objection. Foundation.

11 A. So I don't know what AvMed's patients were
12 receiving the drug for. If you could provide me that
13 specific, I would be happy to -- but if they -- I'll
14 make it simple for you.

15 If they weren't receiving it for infantile spasm
16 or if they weren't receiving it for exacerbation of MS,
17 and especially if they have tried other products, then
18 it probably was not beneficial for them to be receiving
19 it.

20 BY MR. RASMUSSEN:

21 Q. And you would agree that Acthar has
22 limited utilization and for most indications that their

1 listed for it's not of much value?

2 A. For most approvals --

3 MR. FORST: Just wait a few --

4 A. Sorry.

5 MR. FORST: I'm going to object to the

6 scope and now just reading from the prior testimony.

7 A. So for most things Acthar is approved for,
8 it is not beneficial.

9 BY MR. RASMUSSEN:

10 Q. And so --

11 A. There are better products available.

12 Q. Right. And there are better products that
13 are far less expensive?

14 A. Less -- correct.

15 Q. And therefore when companies like AvMed
16 pay for these medications so their patients can receive
17 them, the drug, they're not getting the value?

18 MR. FORST: Objection.

19 A. Again, I would have to know the specifics
20 of what their patients were being prescribed the drug
21 for, but if it was not one of those two that I
22 mentioned, then your statement would be correct.

1 BY MR. RASMUSSEN:

2 Q. Have you ever heard the term captive
3 pharmacy?

4 A. Yes.

5 Q. What is a captive pharmacy?

6 A. So a captive pharmacy is, I believe, one
7 that's owned by its -- by another company and that that
8 company utilizes that pharmacy.

9 Q. Was Acthar -- was it distributed by a
10 captive pharmacy?

11 A. So Acthar had I believe limited
12 distribution. That is it was available through
13 multiple specialty pharmacies.

14 Q. But in this -- in the context, you would
15 still consider Acthar to be subject to a captive
16 pharmacy?

17 MR. FORST: Objection to the form.

18 A. So Acthar was available through multiple
19 pharmacies, and so those pharmacies were not owned by
20 the same entities, and so there may have been a captive
21 pharmacy in the -- but Acthar had a limited
22 distribution model, specialty pharmacies.

1 BY MR. RASMUSSEN:

2 Q. And I think you interrupted yourself, but
3 there may have been an active or a captive pharmacy in
4 the -- and fill in that blank for me?

5 MR. FORST: Objection to the form.

6 Hypothetical. Calls for speculation. Foundation.

7 A. So you know, Express Scripts is a PBM,
8 Express Scripts has a specialty pharmacy.

9 If it's -- if it's dispensed out of the Express
10 Scripts pharmacy, which it was, then you could consider
11 that a captive pharmacy to Express Scripts.

12 BY MR. RASMUSSEN:

13 Q. Okay. And you would agree that removing
14 captive pharmacies helps make drug prices more fair?

15 A. I don't know the basis for that
16 assumption.

17 Q. Sure. I'm going to show you what we are
18 going to mark as Exhibit 5.

19 [Exhibit 5 marked for identification.]

20 BY MR. RASMUSSEN:

21 Q. And if you would, go ahead and turn over
22 to the second page.

1 Exhibit 5 is -- for the record, it's an e-mail
2 exchange, but at the top of the first page is dated
3 December 15th, 2015. It's an e-mail from Jennifer
4 Holian to Nicole Hebbert.

5 MR. FORST: Does this have a Bates number,
6 Khristian?

7 MR. RASMUSSEN: You know, I don't
8 understand why these things are not printing the Bates
9 numbers, but it's probably something that -- with our
10 system that we loaded them into.

11 MR. FORST: Okay.

12 MR. RASMUSSEN: That's my guess.

13 MR. FORST: All right. So we'll swap
14 these out? Is that the plan?

15 MR. RASMUSSEN: Yeah.

16 MR. FORST: I'm going to object because
17 there's no way for me to tell if these are outside the
18 scope, but go ahead.

19 BY MR. RASMUSSEN:

20 Q. Okay. So Doctor, I want to invite your
21 attention to the second page of this document. And if
22 you'll come down -- if you see the bullet points on the

1 left-hand side, come down to the second-to-last bullet
2 point.

3 And you see where it says Dr. Steve Miller was
4 interviewed by reporters?

5 A. Uh-huh.

6 Q. Okay. And it says the interview addressed
7 how Express Scripts is making U.S. drug pricing more
8 fair, including -- what? And go ahead and read the
9 rest of that sentence out loud, please.

10 A. Including our approach to the
11 indication-based pricing, our removal of captive
12 pharmacies from our retail network, and our solution
13 that provides a dollar Daraprim alternative to our
14 clients and patients.

15 Q. And so my question is, do you still agree
16 with that statement, that by removing captive
17 pharmacies that helps drive down the cost of
18 medication?

19 A. So in some cases, a pharmaceutical company
20 would have its own pharmacy. That would be their
21 captive pharmacy. And this was mainly around
22 dermatologic products.

1 Q. Right.

2 A. And so we removed those pharmacies so that
3 they could not overcharge.

4 Q. Now, did anyone ever try to remove this
5 captive pharmacy, as you explained it, with respect to
6 Acthar?

7 MR. FORST: Objection to the form.
8 Mischaracterizes testimony.

9 A. I do not know what was attempted for the
10 retail networks for Daraprim.

11 BY MR. RASMUSSEN:

12 Q. So that's a no, you're not aware?

13 A. No --

14 MR. FORST: Objection. That's not what he
15 said. You asked about Acthar. The answer was about
16 Daraprim. So saying the answer is no doesn't make any
17 sense, Khristian. But you have the opportunity to
18 reask, if you would like.

19 BY MR. RASMUSSEN:

20 Q. And so at this time, in 2014, 2015,
21 Express Scripts was eliminating the -- this captive
22 pharmacy as it relates to dispensing Valeant or

1 Valeant -- or as it relates to Valeant's dermatologic
2 products?

3 MR. FORST: Objection to the form.

4 A. Correct. It was -- we were going --
5 Valeant had dermatologic products, they had pharmacies
6 that they had a relationship with, and we were
7 eliminating those pharmacies from the network.

8 BY MR. RASMUSSEN:

9 Q. And that's because Valeant had these
10 dermatology products that were really expensive, and
11 there was -- there were a lot more safety -- a lot more
12 alternatives that were just as effective that were less
13 expensive?

14 A. That is correct.

15 MR. FORST: Objection to the form.

16 BY MR. RASMUSSEN:

17 Q. And just like the case with Acthar, for
18 almost all the indications, there are far less
19 expensive drugs that are just as efficacious?

20 MR. FORST: Objection to the form.

21 A. For most of the things it is approved for.
22 Outside of, you know, infantile spasm and exacerbations

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1 of MS, there are better drugs that are less expensive.

2 BY MR. RASMUSSEN:

3 Q. That's right. And you're not aware of
4 anyone trying to address this captive pharmacy as it
5 relates to Acthar?

6 A. The egregious price of Acthar was set by
7 the manufacturer, and so that was not a solution that I
8 was aware of.

9 MR. FORST: Objection to the form.
10 Mischaracterizes prior testimony.

11 BY MR. RASMUSSEN:

12 Q. All right. I'm now going to show you what
13 we are going to mark as Exhibit 6.

14 MR. RASMUSSEN: And just let me know if
15 these are documents that are outside the scope. I
16 don't think that they are, but if they are --

17 MR. FORST: Well if there's no Bates
18 number there's no way for us to easily tell that. That
19 was the whole point.

20 MR. RASMUSSEN: Oh, okay. Got you.

21 [Exhibit 6 marked for identification.]

22 BY MR. RASMUSSEN:

1 Q. So I would invite your attention now
2 to -- this is an e-mail dated November 23rd, 2015.

3 You know David -- is it Whitrap?

4 A. Correct.

5 Q. What -- and who is that?

6 A. As we talked about before, he works for
7 Brian Henry. He is in public relations.

8 Q. You know Ed -- is it Adamcik?

9 A. Adamcik.

10 Q. Adamcik. You know him as well; right?

11 A. Yes, he was a vice president at Pharma
12 Contracting.

13 Q. Okay. Well, come down -- they were
14 talking about this Barron's developing story.

15 Do you remember when this happened back in 2015?

16 A. Not specifically.

17 Q. Do you see the sentence where it says we
18 expect the story?

19 A. Yeah.

20 Q. Okay. And then I want you to go ahead and
21 read those -- read that sentence and the one following
22 it out loud, please.

1 A. We expect the story will be very negative
2 about Mallinckrodt, which has significantly raised the
3 price of Acthar gel since acquiring the rights to the
4 drug. We also expect the story will question our role
5 in providing the drug given our stance against high
6 cost drugs.

7 Q. So do you think that it's reasonable for a
8 company to knowingly profit by selling and/or
9 distributing a drug that has been subject to egregious
10 price increases?

11 MR. FORST: Objection to the form. Asked
12 and answered four times.

13 A. So we have previously answered this. That
14 is, we used the example of EpiPens. EpiPens are
15 egregiously-priced. We made them available because
16 they are life-saving products. There are many cancer
17 drugs that are egregiously-priced. We make those
18 available because they change the lives of patients
19 that receive them.

20 Acthar gel changes -- is the best drug for
21 infantile spasm, so making it available is appropriate
22 for a specialty pharmacy.

1 Q. And then do you see the third bullet on
2 the page?

3 A. Yes.

4 Q. And here it says Dr. Steve Miller spoke
5 with Reuters and reinforced our commitment to taking
6 action against pharmacies that are not adhering to our
7 network agreements.

8 You agreed with that; correct?

9 A. Correct.

10 Q. And you're not aware of any action being
11 taken against any pharmacy as it relates to Acthar
12 sales?

13 A. I am not aware of any pharmacy taking
14 actions against Acthar.

15 Q. And you're not aware of any action that
16 was taken by you or anyone at Express Scripts against
17 any pharmacy distributing Acthar, or selling Acthar?

18 A. I am not aware.

19 Q. Okay. So would that -- so is it safe then
20 to assume that the policy -- the policies were all
21 being adhered to?

22 MR. FORST: Objection --

1 BY MR. RASMUSSEN:

2 Q. By the pharmacies?

3 MR. FORST: Objection to the form.

4 Foundation. Incomplete hypothetical.

5 A. I can't really address what was happening
6 at pharmacies that dispense Acthar gel.

7 MR. RASMUSSEN: All right. Let's take a
8 quick break. We may be done.

9 MR. FORST: Okay.

10 THE VIDEOGRAPHER: Off the record at 10:28
11 AM.

12 [A recess was taken.]

13 THE VIDEOGRAPHER: Back on the record at
14 10:33 AM.

15 MR. RASMUSSEN: Thanks, Doctor. I don't
16 have any further questions for you.

17 MR. FORST: Pass the witness, I assume?

18 MR. PLATT: Yes.

19 MR. FORST: Nothing -- okay.

20 EXAMINATION

21 BY MR. FORST:

22 Q. I just have one, Dr. Miller, and I think

1 it's to clean up a question that counsel for MSP asked,
2 and I'm going to just go back and read the transcript,
3 because I think that's easiest. And it's specifically
4 line, for everybody's benefit -- question that starts
5 at 43:22.

6 And it says, and it is your opinion -- or strike
7 that. Are you aware of anyone at Express Scripts or
8 any of its subsidiaries ever exaggerating the efficacy
9 of Acthar?

10 You answered, personally no. You know, I have
11 talked about -- it goes on -- and then there was a
12 follow-up question, so is that a yes or a no?

13 And you said, that's a yes.

14 So I think -- I'm going to go back to the
15 original question just to get your answer again.

16 Are you aware of anyone at Express Scripts or
17 any of its subsidiaries ever exaggerating the efficacy
18 of Acthar?

19 MR. RASMUSSEN: Objection to counsel's
20 testifying.

21 BY MR. FORST:

22 Q. You can answer.

1 A. No.

2 MR. FORST: Okay. That's it.

3 THE VIDEOGRAPHER: Off the record at 10:34

4 AM.

5 [Discussion off the record.]

6 THE REPORTER: So Khristian and William,

7 same orders as yesterday, E-Tran for both?

8 MR. PLATT: Yeah.

9 MR. RASMUSSEN: Yeah.

10

11 [SIGNATURE RESERVED.]

12

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1 C E R T I F I C A T E

2

3 I, Jude Arndt, a Certified Shorthand
4 Reporter and Certified Court Reporter, do hereby
5 certify that STEVE MILLER, prior to the commencement of
6 the examination, was sworn by me to testify the truth,
7 the whole truth and nothing but the truth.

8 I DO FURTHER CERTIFY that the foregoing is a
9 true and accurate transcript of the proceedings as
10 taken stenographically by and before me at the time,
11 place and on the date hereinbefore set forth.

12 I DO FURTHER CERTIFY that I am neither a
13 relative nor employee nor attorney nor counsel of any
14 of the parties to this action, and that I am neither a
15 relative nor employee of such attorney or counsel, and
16 that I am not financially interested in this action.

17

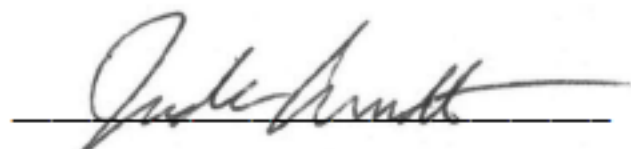
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JUDE ARNDT, CSR, CCR, RPR

CSR NO. 084-004847

CCR NO. 1450

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1 Steve Miller, c/o

QUINN EMANUEL URQUHART & SULLIVAN, LLP

2 1300 I Street NW, Suite 900

Washington, DC 20005

3

Case: MSP Recovery Claims, Series LLC, et al. v. Mallinckrodt Ard Inc., et al.

4 Date of deposition: March 29, 2023

Deponent: Steve Miller

5

6 Please be advised that the transcript in the above
referenced matter is now complete and ready for signature.

7 The deponent may come to this office to sign the transcript,

8 a copy may be purchased for the witness to review and sign,

9 or the deponent and/or counsel may waive the option of

10 signing. Please advise us of the option selected.

11 Please forward the errata sheet and the original signed

12 signature page to counsel noticing the deposition, noting the

13 applicable time period allowed for such by the governing

14 Rules of Procedure. If you have any questions, please do

15 not hesitate to call our office at (202)-232-0646.

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5 Witness Name: Steve Miller

Deposition Date: March 29, 2023

6

I do hereby acknowledge that I have read

7 and examined the foregoing pages

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8

9 (Check appropriate box):

() The same is a true, correct and

10 complete transcription of the answers given by

me to the questions therein recorded.

11 () Except for the changes noted in the

attached Errata Sheet, the same is a true,

12 correct and complete transcription of the

13 answers given by me to the questions therein

14 recorded.

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6 ERRATA SHEET
7

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9 Witness Name: Steve Miller

10 Deposition Date: March 29, 2023

11 Page No. Line No. Change
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22 Signature Date

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